

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

BENNY C.O. TITTERINGTON, deceased)	
Claimant)	
VS.)	
)	
BROOKE INSURANCE)	
Respondent)	Docket No. 270,414
)	
and)	
)	
CONTINENTAL WESTERN INSURANCE CO.)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier appeal the December 11, 2002 Award entered by Administrative Law Judge (ALJ) Jon L. Frobish. The Appeals Board (Board) heard oral argument in Topeka, Kansas, on June 10, 2003. Stacy Parkinson was appointed and participated as a Board Member Pro Tem.

APPEARANCES

William L. Phalen of Pittsburg, Kansas, appeared for claimant. Nathan D. Burghart of Topeka, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Board considered the record and adopted the stipulations listed in the December 11, 2002 Award.

ISSUES

1. Whether the decedent's motor vehicle accident constitutes an accidental injury within the meaning of the Workers Compensation Act.
2. Whether the motor vehicle accident resulted from a heart attack and, if so, whether the "heart amendment" contained in K.S.A. 44-501(e) is applicable to prohibit claimant from recovering workers compensation benefits.
3. Whether the Administrative Law Judge erred in finding that the claimant's death arose out of and in the course of his employment for the respondent.¹

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The Board finds that the ALJ's Award should be modified as to the ALJ's finding that "the claimant did suffer some type of 'heart attack'," but should otherwise be affirmed. Specifically, the Board finds decedent's cause of death was not coronary artery disease. Instead, decedent died from the blunt chest trauma he sustained when his vehicle struck an embankment.

Why the decedent's vehicle left the road is unknown. But it is not necessary that the accident's cause be proven for the death to be compensable. It is necessary, however, that the cause of death not be coronary artery disease. The greater weight of the credible medical evidence is that the decedent's heart was still pumping when the impact occurred. Accordingly, decedent had not suffered sudden cardiac death and was not "clinically dead" before his vehicle came to a sudden stop when it struck the embankment. The Board finds that regardless of whether decedent suffered a heart attack, the cause of death was the collision of the vehicle with the embankment. This renders the resulting injuries and death compensable.² Furthermore, because it was not proven that decedent suffered a heart attack, K.S.A. 44-501(e), the so-called "heart amendment" is not applicable to this claim.

The Board further finds that decedent's accident arose out of and in the course of his employment because the decedent was traveling from respondent's Columbus, Kansas

¹ See Respondent's Application for Review Before the Workers Compensation Appeals Board and Docketing Statement (filed Dec. 23, 2002).

² See *Baggett v. B & G Const.*, 21 Kan. App. 2d 347, 900 P.2d 857 (1995).

office to its Pittsburg, Kansas office when the accident occurred.³ Thus, travel was incident to and a hazard of the decedent's employment.⁴

Award

WHEREFORE, except as to the finding that decedent suffered a heart attack, the December 11, 2002 Award entered by the Administrative Law Judge is affirmed.

IT IS SO ORDERED.

Dated this _____ day of June 2003.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
Nathan D. Burghart, Attorney for Respondent and its Insurance Carrier
Jon L. Frobish, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

³ See *Newman v. Bennett*, 212 Kan. 562, Syl. ¶ 1, 512 P.3d 497 (1973); *Bennett v. Wichita Fence Co.*, 16 Kan. App. 2d 1001, *rev. denied* 250 Kan. 804 (1992).

⁴ See *Kindel v. Ferco Rental, Inc.*, 258 Kan. 272, 899 P.2d 1058 (1995); *Schmidt v. Jensen Motors, Inc.*, 208 Kan. 182, 490 P.2d 383 (1971).